

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ASHLEY TOSE, #236267

PETITIONER

V.

CIVIL ACTION NO. 3:22-CV-674-KHJ-BWR

NATHAN BLEVINS, *Deputy
Commissioner of Mississippi
Department of Corrections*

RESPONDENT

ORDER

Before the Court is the [11] Report and Recommendation (“Report”) of United States Magistrate Judge Bradley W. Rath. The Report recommends granting Respondent Deputy Commissioner Nathan Blevins’s [6] Motion to Dismiss. [11] at 1. Written objections to the Report were due by May 3, 2023. *Id.* at 8. The Report notified the parties that failure to file written objections by that date would bar further appeal in accordance with 28 U.S.C. § 636. *Id.*

When no party has objected to a magistrate judge’s report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1). Instead, the Report is reviewed under the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Petitioner Ashley Tose seeks habeas relief, contending: (1) she entered her guilty plea under duress, (2) the Circuit Court of Hinds County lacked jurisdiction, (3) she did not injure the state, and (4) the trial judge denied her request for non-

adjudication without explanation. [1] at 5–10. Deputy Commissioner Blevins moved to dismiss Tose’s petition because (1) she failed to exhaust her claims before seeking federal habeas relief and (2) she failed to establish good cause for the Court to hold her petition in abeyance until she properly exhausted her claims. [6] at 3–8. Tose did not respond. Accordingly, the Court entered an Order to Show Cause warning Tose that failure to timely respond would subject her petition to dismissal for failure to prosecute and to comply with a Court order. Order [8] at 1–2. Tose still did not file a substantive response, but she filed a [9] Response raising issues unrelated to exhaustion and asking the Court not to dismiss her petition. [9] at 1.

The Magistrate Judge recommends granting Deputy Commissioner Blevins’s motion and dismissing the petition without prejudice. Tose did not object to the Report. The Report is neither clearly erroneous nor contrary to law. Accordingly, it is adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the [11] Report and Recommendation of United States Magistrate Judge Bradley W. Rath is adopted as the opinion of this Court. The Court GRANTS Respondent Deputy Commissioner Nathan Blevins’s [6] Motion to Dismiss and DISMISSES Petitioner Ashley Tose’s [1] Petition for Writ of Habeas Corpus without prejudice.

The Court will issue a separate Final Judgment consistent with this Order.

SO ORDERED, this the 11th day of May, 2023.

s/ Kristi H. Johnson
UNITED STATES DISTRICT JUDGE